

AMENDMENTS TO LB 561

(Amendments to E & R amendments, ER8126)

Introduced by Langemeier, 23.

1 1. Strike section 3 and insert the following new
2 sections:

3 Sec. 3. Section 70-1903, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

5 70-1903 For purposes of the Rural Community-Based Energy
6 Development Act:

7 (1) C-BED project or community-based energy development
8 project means a new wind energy project that:

9 (a) Has an ownership structure as follows:

10 (i) For a C-BED project that consists of more than
11 two turbines, has one or more qualified owners with no single
12 individual qualified owner owning directly or indirectly more than
13 fifteen percent of the project and with at least thirty-three
14 percent of the gross power purchase agreement payments flowing to
15 the qualified owner or owners or local community; or

16 (ii) For a C-BED project that consists of one or
17 two turbines, has one or more qualified owners with at least
18 thirty-three percent of the gross power purchase agreement payments
19 flowing to a qualified owner or owners or local community; and

20 (b) Has a resolution of support adopted:

21 (i) By the county board of each county in which the C-BED
22 project is to be located; or

1 (ii) By the tribal council for a C-BED project located
2 within the boundaries of an Indian reservation;

3 (2) Debt financing payments means principal, interest,
4 and other typical financing costs paid by the C-BED project company
5 to one or more third-party financial institutions for the financing
6 or refinancing of the construction of the C-BED project. Debt
7 financing payments does not include the repayment of principal at
8 the time of a refinancing;

9 ~~(2)~~ (3) Electric utility means an electric supplier that:

10 (a) Owns more than one hundred miles of
11 one-hundred-fifteen-kilovolt or larger transmission lines in the
12 State of Nebraska;

13 (b) Owns more than two hundred megawatts of electric
14 generating facilities; and

15 (c) Has the obligation to directly serve more than two
16 hundred megawatts of wholesale or retail electric load in the State
17 of Nebraska; and

18 (4) Gross power purchase agreement payments means the
19 total amount of payments during the life of the agreement. For
20 power purchase agreements entered into on or before December 31,
21 2011, if the qualified owners have a combined total of at least
22 thirty-three percent of the equity ownership in the C-BED project,
23 gross power purchase agreement payments shall be reduced by the
24 debt financing payments; and

25 ~~(3)~~ (5) Qualified owner means:

26 (a) A Nebraska resident;

27 (b) A limited liability company that is organized under

1 the Limited Liability Company Act and that is made up of members
2 who are Nebraska residents;

3 (c) A Nebraska nonprofit corporation organized under the
4 Nebraska Nonprofit Corporation Act;

5 (d) An electric supplier as defined in section
6 70-1001.01, except that ownership in a single C-BED project is
7 limited to no more than:

8 (i) Fifteen percent either directly or indirectly by a
9 single electric supplier; and

10 (ii) A combined total of twenty-five percent ownership
11 either directly or indirectly by multiple electric suppliers; or

12 (e) A tribal council.

13 Sec. 4. Section 70-1904, Revised Statutes Cumulative
14 Supplement, 2008, is amended to read:

15 70-1904 (1) A C-BED project developer and an electric
16 utility are authorized to negotiate in good faith mutually
17 agreeable power purchase agreement terms.

18 (2) A qualified owner or any combination of qualified
19 owners may develop a C-BED project with an equity partner that is
20 not a qualified owner, if not more than sixty-seven percent of the
21 gross power purchase agreement payments flow to the nonqualified
22 owners.

23 (3) Except for an inherited interest, the transfer of
24 a C-BED project to any person other than a qualified owner is
25 prohibited during the initial ten years of the power purchase
26 agreement.

27 (4) A C-BED project that is operating under a power

1 purchase agreement is not eligible for any applicable net energy
2 billing.

3 (5) A C-BED project shall be subject to approval by the
4 Nebraska Power Review Board in accordance with Chapter 70, article
5 10, or shall receive certification as a qualifying facility in
6 accordance with the federal Public Utility Regulatory Policies Act
7 of 1978, 16 U.S.C. 2601 et seq., with written notice of such
8 certification provided to the Nebraska Power Review Board.

9 (6) A C-BED project developer shall notify the electric
10 utility that has a power purchase agreement with a C-BED project if
11 there is a change in project ownership which makes the project no
12 longer eligible as a C-BED project.

13 Sec. 5. Section 77-2704.57, Revised Statutes Cumulative
14 Supplement, 2008, is amended to read:

15 77-2704.57 (1) Sales and use tax shall not be imposed
16 on the gross receipts from the sale, lease, or rental of personal
17 property for use in a C-BED project or community-based energy
18 development project. This exemption shall be conditioned upon
19 filing requirements for the exemption as imposed by the Tax
20 Commissioner. The requirements imposed by the Tax Commissioner
21 shall be related to ensuring that the property purchased qualifies
22 for the exemption. The Tax Commissioner may require the filing
23 of the documents showing compliance with section 70-1907, the
24 organization of the project, the distribution of the payments,
25 the power purchase agreements, the project pro forma, articles of
26 incorporation, operating agreements, and any amendments or changes
27 to these documents during the life of the power purchase agreement.

1 (2) The Tax Commissioner shall notify an electric utility
2 that has a power purchase agreement with a C-BED project if
3 there is a change in project ownership which makes the project no
4 longer eligible as a C-BED project. Purchase of a C-BED project
5 by an electric utility prior to the end of the power purchase
6 agreement disqualifies the C-BED project for the exemption, but the
7 Department of Revenue may not recover the amount of the sales and
8 use tax that was not paid by the project prior to the purchase.

9 (3) For purposes of this section:

10 (a) C-BED project or community-based energy development
11 project means a new wind energy project that:

12 (i) Has an ownership structure as follows:

13 (A) For a C-BED project that consists of more than
14 two turbines, has one or more qualified owners with no single
15 individual qualified owner owning directly or indirectly more than
16 fifteen percent of the project and with at least thirty-three
17 percent of the gross power purchase agreement payments flowing to
18 the qualified owner or owners or local community; or

19 (B) For a C-BED project that consists of one or
20 two turbines, has one or more qualified owners with at least
21 thirty-three percent of the gross power purchase agreement payments
22 flowing to a qualified owner or owners or local community; and

23 (ii) Has a resolution of support adopted:

24 (A) By the county board of each county in which the C-BED
25 project is to be located; or

26 (B) By the tribal council for a C-BED project located
27 within the boundaries of an Indian reservation;

1 **(b) Debt financing payments means principal, interest,**
2 **and other typical financing costs paid by the C-BED project company**
3 **to one or more third-party financial institutions for the financing**
4 **or refinancing of the construction of the C-BED project. Debt**
5 **financing payments does not include the repayment of principal at**
6 **the time of a refinancing;**

7 ~~(b)~~ **(c) New wind energy project means any tangible**
8 **personal property incorporated into the manufacture, installation,**
9 **construction, repair, or replacement of a device, such as a wind**
10 **charger, windmill, or wind turbine, which is used to convert wind**
11 **energy to electrical energy or for the transmission of electricity**
12 **to the purchaser; and**

13 ~~(e)~~ **(d) Qualified owner means:**

14 **(i) A Nebraska resident;**

15 **(ii) A limited liability company that is organized under**
16 **the Limited Liability Company Act and that is entirely made up of**
17 **members who are Nebraska residents;**

18 **(iii) A Nebraska nonprofit corporation organized under**
19 **the Nebraska Nonprofit Corporation Act;**

20 **(iv) An electric supplier as defined in section**
21 **70-1001.01, except that ownership in a single C-BED project is**
22 **limited to no more than:**

23 **(A) Fifteen percent either directly or indirectly by a**
24 **single electric supplier; and**

25 **(B) A combined total of twenty-five percent ownership**
26 **either directly or indirectly by multiple electric suppliers; or**

27 **(v) A tribal council.**

1 (4) ~~Power~~ Gross power purchase agreement payments are the
2 total amount of payments during the life of the agreement. For
3 power purchase agreements entered into on or before December 31,
4 2011, if the qualified owners have a combined total of at least
5 thirty-three percent of the equity ownership in the C-BED project,
6 gross power purchase agreement payments shall be reduced by the
7 debt financing payments. For the ~~purposes~~ purpose of determining
8 eligibility of the project, an estimate of the payments and their
9 recipients shall be used.

10 (5) Payments to the local community include, but are not
11 limited to, lease payments to property owners on whose property a
12 turbine is located, wind energy easement payments, and real and
13 personal property tax receipts from the C-BED project.

14 (6) The Department of Revenue may examine the actual
15 payments and the distribution of the payments to determine if the
16 projected distributions were met. If the payment distributions to
17 qualified owners do not meet the requirements of this section, the
18 department may recover the amount of the sales or use tax that was
19 not paid by the project at any time up until the end of three years
20 after the end of the power purchase agreement.

21 (7) At any time prior to the end of the power purchase
22 agreements, the project may voluntarily surrender the exemption
23 granted by the Tax Commissioner and pay the amount of sales and use
24 tax that would have otherwise have been due.

25 (8) The amount of the tax due under either subsection
26 (6) or (7) of this section shall be increased by interest at the
27 rate specified in section 45-104.02, as such rate may from time to

1 time be adjusted, from the date the tax would have been due if no
2 exemption was granted until the date paid.

3 Sec. 6. Original sections 70-670 and 70-1014.01, Reissue
4 Revised Statutes of Nebraska, and sections 70-1903, 70-1904,
5 and 77-2704.57, Revised Statutes Cumulative Supplement, 2008, are
6 repealed.